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20  
21 IN THE UNITED STATES DISTRICT COURT  
22 FOR THE CENTRAL DISTRICT OF CALIFORNIA

23  
24 PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

v.  
25 ELI LILLY AND COMPANY, et al.,

Defendants.

2:23-cv-01929-SPG-SK

**APPENDIX COLLECTING THE  
PEOPLE'S DISCLAIMER STATEMENTS  
IN PRIOR MOTION TO REMAND**

Judge: Hon. Sherilyn Peace Garnett  
Courtroom: 5C

1      **People's Notice of Motion and Motion to Remand (ECF 78)**

- 2      • 2:17-2:20: “[I]n order to clarify any confusion on the part of Express Scripts  
3      or Caremark, the People specifically waived [in the Complaint] any relief  
4      against Express Scripts or Caremark relating to or arising out of TRICARE  
5      and FEHBA plans and reaffirm that waiver in this Motion.”

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7      **People's Memorandum in Support of Motion to Remand (ECF 78-1)**

- 8      • 1:18-1:20: “The Complaint expressly disavows any inclusion of federal  
9      insurance plans such as TRICARE and otherwise raises no federal issues.”
- 10     • 1:21-1:27: “Express Scripts and Caremark removed the action, invoking the  
11     federal officer removal statute, 28 U.S.C. § 1442, because they assist the  
12     federal government with providing health insurance to uniformed military  
13     personnel, veterans, federal employees, and their families. . . . The Complaint  
14     does not challenge how the federal government provides those federal health  
15     benefits.”
- 16     • 3:8-3:12: “The Complaint does not challenge the Department of Defense’s  
17     (DoD) operation of TRICARE, which provides civilian healthcare to certain  
18     persons associated with the military. Nor does the Complaint challenge the  
19     federal Office of Personnel Management’s (OPM) operation of the Federal  
20     Employee Health Benefits Act (FEHBA) program, which provides healthcare  
21     to federal employees.”
- 22     • 9:2-9:4: “[T]he Complaint is not challenging, or seeking recovery as a result  
23     of, Express Scripts’ conduct regarding the TRICARE program.”
- 24     • 9:16: “The Complaint does not challenge any conduct related to TRICARE.”
- 25     • 10:1-10:3: “The Complaint simply does not challenge how the federal  
26     government sets its TRICARE formularies and associated co-pays. Nor does  
27     it challenge Express Scripts’ collection of those co-pays.”

- 1     • 10:24-10:25: “The Complaint does not challenge *any* DoD activities and the  
2         People waive any such challenge here.” (Emphasis in original).
- 3     • 10:26: “DoD activities are not at issue in this action[.]”
- 4     • 11:10-11:11: “[T]he People do not challenge conduct related to TRICARE  
5         and FEHBA programs.”
- 6     • 11:14-11:18: “The People are not asserting claims related to FEHBA or  
7         TRICARE against *either* PBMs or Manufacturers. . . . And the People  
8         disclaim any such assertions here.” (Emphasis in original).
- 9     • 14:22-14:23: “[T]he People’s action is not challenging Caremark’s actions  
10         for FEHBA programs[.]”
- 11     • 17:18-17:19: “[T]he People do not seek to recover TRICARE beneficiaries’  
12         copays for insulin.”
- 13     • 18:18-18:19: “[T]he People are not challenging Caremark’s conduct with  
14         respect to FEHBA plans.”
- 15     • 20:27-20:28: “[T]he theory of the People’s suit simply does not challenge the  
16         DoD or OPM’s actions[.]”

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18 **People’s Reply Brief in Support of Remand (ECF 98)**

- 19     • 4:8-4:9: “The disclaimer means joint liability is not being asserted against  
20         Express Scripts related to TRICARE.”
- 21     • 5:11-5:12: “There is nothing in the Complaint challenging Express Scripts’  
22         DoD conduct.”
- 23     • 11:14-11:15: “Caremark’s FEHBA rebate conduct is disclaimed[.]”
- 24     • 11:28: “[T]he Complaint is not asserting claims against Caremark related to  
25         any FEHBA plan.”
- 26     • 15:22-15:23: “The People are not challenging Express Scripts’ TRICARE or  
27         Caremark’s FEHBA plan activities.”

**Transcript from Hearing on Motion to Remand (ECF 125)**

- 2 • 8:4-9:1 (paragraph breaks omitted): “The COURT: . . . So what’s the relief  
3 that you are seeking, and how does that not relate to the relationship that the  
4 various defendants have with the Federal Government or officer? . . .

5 MS. TILLEY: [sic] So people in the United States have insurance or don’t  
6 have insurance through various entities. So, for instance, somebody could be  
7 uninsured. We are seeking relief on somebody who is -- for people who are  
8 uninsured. The conduct that related to Caremark’s work for FEHBA or  
9 Express Scripts work for TRICARE do not relate to insured individuals. If,  
10 for instance, a person has health insurance through their private employer,  
11 again, we are seeking relief for such persons, for instance, if they have a high  
12 deductible health plan and they are paying in their deductible phase the full  
13 cash price of insulin, we are seeking relief on behalf of such individuals. If an  
14 individual has insurance directly, so they are not going through their  
15 employer, we are seeking relief on behalf of such individuals. That person  
16 does not have health insurance through TRICARE or health insurance  
17 through FEHBA. We are also seeking relief on persons on Medicare as pled  
18 in our Complaint. Such people, again, do not have health insurance through  
19 TRICARE or FEHBA.”

20 • 10:13-10:18: “MS. TILLEY: [sic] . . . We believe our Complaint is not an  
21 artful disclaimer. We were clear that we were disclaiming FEHBA and  
22 TRICARE. But even if that was not the case, we’ve been clear about it in our  
23 briefs. I think everybody here understands that we are disclaiming FEHBA  
24 and TRICARE.”

25 • 12:25-13:1: “MS. TILLEY: [sic] . . . We are disclaiming FEHBA and  
26 TRICARE.”

27 • 34:25: “MS. TILLEY: [sic] . . . To be clear, we’ve disclaimed TRICARE and  
28 FEHBA.”

- 1     • 35:3-35:6: "MS. TILLEY: [sic] . . . TRICARE and FEHBA are disclaimed.  
2                 We were trying to be clear about that in the Complaint. We tried to be clear  
3                 about that in the briefing. We are clear about that now. They are disclaimed."
- 4     • 35:10-35:12: "MS. TILLEY: [sic] . . . We are not seeking relief from  
5                 manufacturers. We are not seeking relief from PBMs related to TRICARE or  
6                 FEHBA."
- 7     • 35:25: "MS. TILLEY: [sic] . . . We are not suing over TRICARE and  
8                 FEHBA."
- 9     • 36:11-36:12: "MS. TILLEY: [sic] . . . We are stating again we are not  
10                 seeking penalties as to TRICARE conduct."

11  
12     Dated: September 18, 2024

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